IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.9852/05

Rajkumar Singh **Versus** State & Ors.

DATE OF ORDER :: 04/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. R.P. Garg, for petitioner
Mr. B.K. Sharma, Dy.G.A.

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Only grievance raised by petitioner in the instant petition is that despite the fact that he is working as Class IV in the office of respondents since 1996, but he has not been fixed in the minimum of regular pay scale of the cadre of Class IV.

Earlier petitioner approached this court by filing C.W. No.2556/96 and his basic grievance was that his appointment should be regularized in the cadre of Class IV which was decided by this court vide judgment dated 23rd July, 1997, which has been reproduced at Page 3 of the writ petition. This court partly allowed the writ petition with a direction to allow him to continue till regularly selected candidates are made available. Thus, his prayer for regularization of service was declined. He again preferred C.W. No.4922/98 wherein the order by which he was fixed on sum of Rs.22/- per day

dated 19th May, 1998 and was shown to be part-time employee, was challenged. This writ petition was decided by this court on 31st January, 2000 with the following direction:

> "अत: यह रिट याचिका स्वीकार की जाती है जिला शिक्षा अधिकारी माध्यमिक जयपुर प्रथम जयपुर का दिनांक 19-5-1998 प्रदर्श 1 अपास्त किया जाता है तथा अप्रार्थीगण को निर्देश दिया ताजा ह कि वे इस न्यायालय के आदंश दिनांक 23-07-1997 की पालना करते हुए प्रार्थी को दिनांक 05-02-1996 से चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्त मानते हुए उसे चतुर्थ श्रेणी कर्मचारी के पद का वेतन व अन्य परिलाभ प्रदान करेगे तथा राज्य सरकार के आदेश दिनांक 04-03-1998 की पालना प्रदान करते हुए प्रार्थी के सेमी परमानेट स्टेटस के सम्बन्ध में निर्णय लेगे प्रार्थी को जो अब तक वेतन दिया गया है उसे इस न्यायालय के निर्देशानुसार दिये जाने वाले ेनत में समायोजित किया जा सकेगा अप्रार्थीगण को यह भी निर्देश दिया जाता है कि वे इस आदेश की पालना आदेश की प्राप्ति से नीत माह के भीतर भीतर आवश्यक रूप से कर देगे प्रार्थी रिट याचिका का खर्चा भी रू 2000 अप्रार्थीगण से प्राप्त करने का अधिकारी होगा "

Being aggrieved by the said order, respondents preferred Special Appeal and Division Bench of this court partly allowed the appeal to the extent that the direction of the learned Single Judge to consider the candidature of petitioner for regularization of his service under the Work-charged Service Rules, 1964 was set aside. However, it was directed that the candidature of petitioner for regularization of service in the cadre of Class IV may be considered in accordance with rules applicable to Class IV employees of the Education Department. It appears that as regards the direction of learned Single Judge of this court in judgment dated 31st January, 2000 granting him the benefit of pay of the Class IV was not disturbed by the

Division Bench in appeal preferred by the respondents. Since despite direction of the learned Single Judge which has attained finality when the petitioner was not fixed in the pay scale of the cadre of Class IV, he preferred instant petition.

His main grievance is that he is working since February, 1996 and still he is being paid a sum of Rs.73/- per day which is the minimum wages fixed by the Government under its notification issued under the Minimum Wages Act and he is now working for more than 10 years and regularly discharging duties of Class IV and even otherwise there is no distinction in the duties which is discharged by him in comparison to other who are regularly appointed in the cadre of Class IV working in the office of respondents. On the basis of principle laid down by this court and so also by apex court of equal for equal work enshrined under Articles 14 & 39(d) of the Constitution, he is entitled for the minimum of pay of the post in question.

Counsel for respondents submits that as the petitioner is working as daily wager, he is only entitled to get the minimum wages which is being fixed by the Government from time to time under its notification and regular pay is not admissible to such like employees who are working on daily wages basis and there are judgments of apex court also wherein daily wagers have been

denied regular pay scale, of which reference has been made in Para 6 of their additional affidavit.

I have considered the submission of both the counsel and perused the material available on record.

So far as the instant petition is concerned, the judgment of this court in C.W. No.4922/98 decided on 31st January, 2000 which has been quoted supra the direction to fix the petitioner in the pay scale and allowances of the cadre of Class IV was not disturbed by the Division Bench in the appeal preferred by the respondents.

Only fact which was denied by the Division Bench was that petitioner will not be entitled for regularization of service under the Workcharged Service Rules, 1964 in terms of Government Order dated 4th March, 1998 and was modified to the extent that it will be considered in accordance with relevant rules applicable in the Education Department in the cadre of Class IV.

In my considered opinion, once the judgment of learned Single Judge to the extent as referred to supra has attained finality, the respondents were not justified in still continuing the petitioner on daily wages basis.

Accordingly, the writ petition stands allowed. Respondents are directed to fix the petitioner in the minimum pay scale in the cadre of Class IV along with other admissible allowances from the date of filing of the instant petition i.e. 5th December, 2005. Arrears be computed and paid to the petitioner within two months. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.